

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39754; File No. SR-Phlx-97-53]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amending Its Floor Procedure Advice A-1 Regarding Displaying Best Bids and Offers

March 13, 1998.

#### I. Introduction

On November 3, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its floor procedure Advice A-1 regarding displaying best bids and offers. On December 23, 1997, and January 20, 1998, respectively, the Exchange filed Amendments 1 and 2 to the proposal with the Commission.<sup>3</sup>

The proposed rule change and Amendments 1 and 2 thereto were published for comment in the **Federal Register** on January 29, 1998.<sup>4</sup> No comments were received on the proposal. This order approves the proposal as amended.

#### II. Description of the Proposal

The Phlx is proposing to amend its Advice A-1, regarding Displaying Best Bids and Offers to require Floor Brokers and Registered Options Traders ("ROT's") to immediately remove stale bids/offers. Currently, Advice A-1 requires that Specialists use due diligence to ensure that the best available bid and offer is displayed for those option series in which s/he is assigned. Under Advice A-1, bids and offers for the Specialist's own account, bids and offers on the book, and bids and offers established in the crowd are deemed to be available for display purposes. The Phlx proposes: (1) To designate the foregoing provisions from the current advice as a paragraph (a) of Advice A-1 and (2) to create new

paragraph (b), to govern situations where a member of the trading crowd is no longer bidding and offering. In the latter situations, under the proposal, the Floor Broker or ROT would be required to use due diligence to inform the Specialist when s/he is no longer bidding/offering at that price. Under the proposal, the Floor Broker or ROT must immediately inform the Specialist when s/he is "out" of that bid/offer, including due to an execution or departure from the crowd.

New paragraph (b) is being proposed to address situations where members have been "out" of a bid/offer, yet failed to inform the Specialist. Often, that member is no longer present in the trading crowd. In that instance, if a trade occurs because someone accepted the stale bid/offer, either the member who initiated the bid/offer, the Specialist or the other members of the trading crowd will be required to honor the trade. Regardless of who honors the trade, the intent of this proposal is to deter these occurrences by imposing fines for such conduct. The proposed language refers to being "out" of a market for reasons including (but not limited to) an execution or a departure from the crowd. Other reasons may also apply, but the Exchange determined that an exhaustive list is neither possible, nor necessary, and, therefore, the violation involves the general failure to inform the Specialist, regardless of the particular reason for being "out."

A member that fails to meet the obligations imposed upon it by new paragraph (b) will be subject to a fine.<sup>5</sup> Under the proposal, fines would be imposed by Option Floor Officials who would determine whether a member should be fined based upon whether a stale quote was caused by a Specialist not using due diligence to ensure that the best available bid and offer is displayed pursuant to paragraph (a) or whether it was caused by a Floor Broker or ROT not using due diligence to inform the Specialist that it was no longer bidding/offering at that price, pursuant to paragraph (b) of the Advice. The Exchange believes that violations of proposed new paragraph (b) of the

Advice involving a failure to notify the Specialist when a Floor Broker or ROT is "out" of a market are within the purview of Phlx Rule 970, concerning minor rule violations, and are otherwise designed to be easily verifiable and objective. The Exchange notes that the proposed fines are comparable to those in other advices, such as Advices A-2 (Types of Orders to be Accepted onto the Specialist's Book), B-4 (PHLX ROT's Entering Orders from On-Floor and Off-Floor for Execution on the Exchange) and B-5 (Agency-Principal Restrictions).

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).<sup>6</sup> Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5)<sup>7</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The proposal is also consistent with the Section 6(b)(6)<sup>8</sup> requirement that the rules of an exchange provide that its members and persons associated with those members be appropriately disciplined for violations of an exchange's rules and the Act.<sup>9</sup>

The proposal is consistent with Exchange Act Section 6(b)(5) because it should help to discourage Floor Brokers and ROT's from walking away from quotes that they have posted. The proposal also is consistent with Exchange Act Section 6(b)(6) in that it provides for an appropriate penalty to be assessed against those who violate the advice.

Maintaining accurate option quotes is integral to the Specialist's role in the marketplace. Although a member posting a bid/offer is generally not held to that market after leaving the trading crowd, the purpose of the proposed rule change is to discourage stale markets by giving the Exchange the ability to impose fines for failure to remove such a bid/offer. Failure to remove a bid/offer may cause the member making the bid/offer or other crowd participants to have to honor an incorrectly disseminated

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to David Sieradzki, Attorney, Division of Market Regulation ("Division"), Commission dated December 18, 1997 and letter from J. Keith Kessel, Phlx, to David Sieradzki, Attorney, Division, Commission dated January 16, 1998. Amendments 1 and 2 made several changes to clarify the purpose section of the filing.

<sup>4</sup> Securities Exchange Act Release No. 39571 (January 22, 1998), 63 FR 4515 (January 29, 1998).

<sup>5</sup> The fine schedule applicable to proposed new paragraph (b) of the Advice will be as follows:

1st Occurrence: \$250.00.

2nd Occurrence: \$500.00.

3rd and Thereafter: Sanction is discretionary with Business Conduct Committee.

The fine schedule applicable to specialists, which will remain unchanged, is as follows:

1st Occurrence: \$50.00.

2nd Occurrence: \$100.00.

3rd Occurrence: \$250.00.

4th and Thereafter: Sanction is discretionary with Business Conduct Committee.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78f(b)(6).

<sup>9</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

quote that may have attracted order flow, including Phlx Automatic Execution System orders. To avoid this result, the Commission believes that it is appropriate for the Phlx to require Floor Brokers and ROTs to use due diligence to inform the Specialist when they are "out" of a bid/offer.

The Commission notes that the proposed rule is similar to a Chicago Board Options Exchange rule, requiring Floor Brokers, Designated Primary Market-Makers and Order Book Officials causing a bid/offer to be disseminated to be responsible for having the bid/offer removed once the order is filled or canceled.<sup>10</sup>

The Exchange has represented that this rule will be enforced under Exchange Rule 970, which is the Exchange's minor rule violation enforcement and reporting plan ("MRP").<sup>11</sup> The Commission believes that enforcing Floor Procedure Advice A-1, paragraph (b) under the Exchange's MRP is consistent with Section 6(b)(6) of the Act. The purpose of the Exchange's MRP is to provide a response to a violation of the Exchange's rules when a meaningful sanction is needed but when initiation of a

disciplinary proceeding pursuant to Exchange Rule 960.2<sup>12</sup> is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the nature of the violation. Violations of Floor Procedure Advice A-1, paragraph (b) can be appropriately handled through expedited proceedings because they are objective in nature and easily verifiable. Noncompliance with the provisions may be determined objectively and adjudicated quickly without the complicated factual and interpretive inquiries associated with more sophisticated Exchange disciplinary proceedings.

Finally, the Commission finds that the imposition of the recommended fines for violations of Floor Procedure Advice A-1, paragraph (b) should result in appropriate discipline of members in a manner that is proportionate to the nature of such violations.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-Phlx-97-53) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Collection Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), in compliance with Pub. L. 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

1. Statement of Agricultural Employer (Years prior to 1988); Statement of Agricultural Employer (1988 and Later)—0960-0036. The information on Forms SSA-1002 and SSA-1003 is used by the Social Security Administration (SSA) to resolve discrepancies when farm workers have alleged that their employers did not report their wages or reported them incorrectly. The respondents are agricultural employers.

	SSA-1002	SSA-1003
Number of Respondents .....	75,000	50,000.
Frequency of Response .....	1	1.
Average Burden Per Response (in minutes) .....	10	30.
Estimated Annual Burden (in hours) .....	12,500	25,000.

2. Beneficiary Recontact Report—0960-0502. The information on Form SSA-1588-OCR-SM is used by SSA to recontact mothers, fathers or children ages 15-17, who receive their benefits directly, to determine if they are still entitled to benefits. The respondents are beneficiaries who are in the "high risk" area and, therefore, are most prone to overpayments.

*Number of Respondents:* 163,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 5 minutes.

*Estimated Annual Burden:* 13,583 hours.

3. Information About Joint Checking/Savings Account—0960-0461. The information collected on Form SSA-2574 is used by SSA to determine whether a joint bank account should be

counted as a resource of a Supplemental Security Income (SSI) claimant or applicant in determining eligibility for SSI. The respondents are applicants for and recipients of SSI payments and individuals who are joint owners of financial accounts with SSI applicants/recipients.

*Number of Respondents:* 200,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 7 minutes.

*Estimated Annual Burden:* 23,333 hours.

4. Agency/Employer GPO Questionnaire—0960-0470. The information on Form SSA-4163 is used by SSA to determine the need for and the amount of any offset of benefits for certain individuals receiving Government pensions and receiving or

applying for Social Security benefits. The respondents are State governments or their political subdivisions.

*Number of Respondents:* 1,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 3 minutes.

*Estimated Annual Burden:* 50 hours.

5. Authorization for the Social Security Administration to Obtain Records from a Financial Institution and Request for Records—0960-0293. The information on Form SSA-4641 is used by SSA to determine whether an applicant meets the resource eligibility requirements for SSI and Aid to Families with Dependent Children (AFDC). This information is only used as part of the quality review of the AFDC program. The respondents are financial institutions.

periodic, as opposed to immediate, reporting. See Phlx Rule 970 and 17 CFR 240.19d-1(c).

<sup>12</sup> Phlx Rule 960.2 governs the initiation of disciplinary proceedings by the Exchange for violations within the disciplinary jurisdiction of the Exchange.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>10</sup> See CBOE Rule 8.51, Commentary .02

<sup>11</sup> The Phlx's minor rule plan, codified in Phlx Rule 970, contains floor procedure advices, such as Advice A-1, along with the accompanying fine schedules. Rule 19d-1(c)(2) under the Act authorizes national securities exchanges and other self-regulatory organizations ("SRO's") to adopt minor rule violation plans for summary discipline

and abbreviated reporting. Rule 19d-1(c)(1) under the Act requires that SROs promptly file notice with the Commission of any final disciplinary actions. However, minor rule violations not exceeding \$2,500 where the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies at the SRO with respect to the matter are deemed not final for purposes of Rule 19d-1(c)(1), thereby permitting